

RICH MICHAELSON MAGALIFF, LLP
335 Madison Avenue, 9th Floor
New York, NY 10017
646.453.7851
Howard P. Magaliff

Hearing date and time: 10/19/21 at 10:00 AM
Objection date and time: 10/18/21 at 12:00 noon

Attorneys for Howard P. Magaliff, Chapter 7 Trustee

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
In re: :
ALEJANDRO and ROSA QUITO, : Chapter 7
: Case No. 21-22288 (RDD)
: Debtors. :
----- X

**NOTICE OF HEARING ON TRUSTEE'S MOTION
TO TERMINATE AUTHORITY TO OPERATE
540 CONCORD AVENUE, BRONX, NEW YORK**

PLEASE TAKE NOTICE, that a hearing to consider the Trustee's *Motion to Terminate Authority to Operate 540 Concord Avenue, Bronx, New York* (the "Motion to Terminate") will be held on October 19, 2021 at 10:00 AM before the Honorable Robert D. Drain, United States Bankruptcy Judge. The hearing will be conducted virtually using Zoom for Government. Parties wishing to appear must register in advance using the Electronic Appearance portal located on the Court's website at <http://ecf.nysb.uscourts.gov/cgi-bin/nysbAppearances.pl>.

PLEASE TAKE FURTHER NOTICE that objections, if any, to the relief requested in the Motion to Terminate must be in writing and conform to the Bankruptcy Code, the Bankruptcy Rules and Local Rules of the Bankruptcy Court, must set forth the name of the objecting party, the basis for the objection, and the specific grounds therefore, and must be filed with the Bankruptcy Court electronically in accordance with General Order M-399 (which can be found at www.nysb.uscourts.gov) by registered users of the Bankruptcy Court's case filing system and, by all other parties in interest, on a 3.5 inch disk, preferably in Portable Document

Format (PDF), Word, or any other Windows-based word processing format (with a hard copy delivered directly to Chambers) and served in accordance with General Order M-399, and served upon: (i) Rich Michaelson Magaliff, LLP, 335 Madison Avenue, 9th Floor, New York, NY 10017, Attn: Howard P. Magaliff, Esq., *hmagaliff@r3mlaw.com* and (ii) the Office of the United States Trustee, 201 Varick Street, Suite 1006, New York, NY 10014, Attn: Paul Schwartzberg, Esq., *paul.schwartzberg@usdoj.gov* so as to actually be filed with the Bankruptcy Court and received by the parties listed above no later than October 18, 2021 at 12:00 noon (prevailing Eastern Time).

PLEASE TAKE FURTHER NOTICE that if no objection is timely filed and received, the Bankruptcy Court may approve the Motion to Terminate at the hearing. Objecting parties are required to attend the hearing and failure to appear may result in relief being granted or denied upon default.

Dated: New York, New York
October 12, 2021

RICH MICHAELSON MAGALIFF, LLP
Attorneys for the Chapter 7 Trustee
By:

/s/ Howard P. Magaliff
335 Madison Avenue, 9th Floor
New York, NY 10017
646.453.7851
hmagaliff@r3mlaw.com

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UNITED STATES BANKRUPTCY COURT
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In re: :
ALEJANDRO and ROSA QUITO, : Chapter 7
: Case No. 21-22288 (RDD)
: Debtors. :
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TRUSTEE'S MOTION FOR AUTHORITY TO OPERATE DEBTORS'
BUSINESS PURSUANT TO SECTION 721 OF THE BANKRUPTCY CODE

TO THE HON. ROBERT D. DRAIN,
UNITED STATES BANKRUPTCY JUDGE:

Howard P. Magaliff, the chapter 7 trustee (the "Trustee") of the estate of Alejandro and Rosa Quito (the "Debtors"), by his attorneys Rich Michaelson Magaliff, LLP, respectfully submits this motion for the entry of an order terminating his authority to operate the property at 540 Concord Avenue, Bronx, New York, and states:

1. The Debtors filed a *pro se* chapter 7 voluntary petition on May 18, 2021.

Howard P. Magaliff was appointed as the interim chapter 7 trustee, and is the trustee pursuant to section 702(d) of the Bankruptcy Code.

2. By Order dated September 7, 2021 (the "Operating Order"), the Trustee was granted the authority pursuant to section 721 of the Bankruptcy Code to operate and manage the Debtors' businesses and properties in which they have an interest, including without limitation 540 Concord Avenue, Bronx (the "Concord Avenue Property") through the Debtors' 100% ownership of Mel Service, Inc. and 1838 Westchester Avenue, Bronx (the "Westchester Avenue

Property" and together with the Concord Avenue Property, the "Properties") through the Debtors' 100% ownership of Gualaceo Realty Corp., and all other properties owned by the Debtors individually or through corporate, limited liability company or partnership entities.

3. The Trustee retained MYC & Associates, Inc. ("MYC") as property manager. As set forth in Affidavit of Victor Moneypenny attached as Exhibit 1, MYC has been unable to collect any rents or take any steps to manage the Concord Avenue Property because the debtor, Alejandro Quito, has continued to interfere including by telling tenants to not cooperate with or pay rent to the Trustee, and to deal only with Mr. Quito. Moreover, Zoe Kheyman, the lawyer for approximately one dozen tenants, has informed the Trustee that numerous tenants are withholding rent because needed repairs have not been made nor renewal leases provided to enable the tenants to obtain government financial assistance.

4. Attached as Exhibit 2 are affidavits provided by several tenants attesting to Mr. Quito's actions and interference.

5. The Trustee intends to file a motion to approve the auction sale of 100% of the shares of stock of Mel Service, Inc. that is property of the estate, and to approve bidding procedures. In the interim, though, the Trustee is concerned that the inability to operate and manage the Property without funds, documents and records, or cooperation from Mr. Quito could potentially give rise to liability of the Trustee or MYC as property manager for potential out-of-pocket costs or other liability that a tenant or New York City agency might seek to impose. The Trustee believes, in the exercise of sound and prudent business judgment, that tenants will be better served in both the short and long run by turning ownership of the Property over to a buyer with the means and wherewithal to stabilize, manage and fund the Property, through a sale of the equity in Mel Service, Inc.

6. The Trustee has given notice of this Motion to the Debtors, counsel for 540 Concord Lender LLC, counsel for Rapid Funding NYC, LLC, counsel for tenants and the United States Trustee and submits that such notice is sufficient.

7. No previous motion for the relief requested has been made.

WHEREFORE, the Trustee respectfully requests that this Court enter an order, substantially in the form annexed as Exhibit 3, and grant such other and further relief as the Court deems just and proper.

Dated: New York, New York
October 12, 2021

RICH MICHAELSON MAGALIFF, LLP
Attorneys for the Chapter 7 Trustee
By:

/s/ Howard P. Magaliff
335 Madison Avenue, 9th Floor
New York, NY 10017
646.453.7851
hmagaliff@r3mlaw.com

EXHIBIT 1

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In re:

Chapter 7

ALEJANDRO and ROSA QUITO,

Case No.: 21-22288 (RDD)

Debtor.

-----X
AFFIDAVIT OF VICTOR M. MONEYPPENNY

State of New York)
) ss:
County of Richmond)

VICTOR M. MONEYPPENNY, being duly sworn, deposes and says:

1. I am a principal shareholder of the firm MYC & Associates, Inc. (“MYC”), maintaining its offices at 1110 South Avenue, Suite 22, Staten Island, New York 10314. I submit this affidavit at the request of the trustee, Howard Magaliff (“Trustee”), to advise the Court of the problems that MYC is encountering as property manager because of the interference of the debtor, Alejandro Quito (“Mr. Quito”),

2. MYC was retained as property manager to assist the Trustee with the management of 540 Concord Avenue, Bronx, NY (“Property”). The Property is a mixed-use building comprised of 32 residential units and five commercial units. The most important role of a property manager for a property of this size is to collect rent and provide the necessary services to the tenants such as heat, timely repairs, snow removal, peaceful enjoyment and the general upkeep of the Property to preserve its value.

3. MYC’s initial visit to the Property was on September 8, 2021. The purpose of this visit was to attempt to meet as many tenants as possible, post notices advising tenants of the

Trustee's appointment, and deliver a letter to tenants explaining the current situation and MYC's authority as property manager to assist with the operation of the building and rent collection. MYC posted notices in the hallways, on the door of the main entrance and on tenant apartment doors.

4. The following day, MYC participated in a conference call with the Trustee and Zoe Kheyman, a Staff Attorney from The Legal Aid Society who represents approximately one dozen tenants at the Property. MYC was put in contact with Ms. Lurica Roman who is the head of the tenant group and who is represented by Ms. Kheyman. Ms. Roman resides in the Property.

5. Ms. Roman informed MYC that the notices we posted were immediately taken down by Mr. Quito and that Mr. Quito informed all tenants to "ignore the men who visited the Property" and to continue paying rent to him.

6. On September 20, 2021 members of MYC visited the Property to meet with the tenants represented by Ms. Kheyman and to also post the same notices from our previous visit that were now translated into Spanish. Most of the tenants in the building do not speak or understand English with Spanish being their native language. MYC toured the building from first floor to rooftop, entered many of the tenant apartments, met with the commercial tenants and again explained the situation regarding the new management and rent collections. MYC observed many deficiencies with the Property. Tenants explained that Mr. Quito is at the Property daily, renovating apartments, renting apartments, and continuing to harass and threaten tenants regarding rent.

7. On September 30, 2021 members of MYC again visited the Property to meet with tenants, collect affidavits they had written describing Mr. Quito's interference, and attempt to

collect October 2021 rent. We were again informed that Mr. Quito continues to be uncooperative, visits the Property and threatens tenants with eviction if rent is not paid to him. We met with one tenant who showed us copies of money orders payable directly to Mr. Quito for September 2021 as per Mr. Quito's instruction.

8. As of the date of this affidavit, MYC has been able to collect only \$369.15 in rent. As explained to the Trustee, operating expenses for a building this size, especially during winter months, will be over \$10,000 per month, not including insurance. The poor condition of the building will also lead to many unforeseen expenses. It is impossible to continue to operate this building without necessary rental collections and the continued interference by Mr. Quito.

/s/ Victor M. Moneypenny
Victor M. Moneypenny

Sworn to me this
6th day of October 2021

/s/ Marc P. Yaverbaum
Notary Public
State of New York
Registration #01YA6343438
Qualified in Richmond County
Commission Expires June 13, 2024

EXHIBIT 2

AIFFIDAVIT OF SUPPORT

I, Lurica Roman reside at 540 Concord Avenue, Apt 1E hereby state that after September 8, 2021, when bankruptcy papers were put on every tenant's door informing us of the new trustee.,

On Wednesday 9/8/21 people from Rich Michaelson Magaliff came to my building and posted on each tenant door chapter 7 court order regarding the owner Mr. Alejandro Quito. Within minutes Juana Guerrero aka the super from Apt 1C remove the papers from the doors, including the ones posted on the entrance glass door.

My apartment is on the first floor looking unto the courtyard, on that same day Mr. Quito came to the building, stood outside my window, and begin telling tenants to disregard the men who posted the documents. Said that he's the one they must pay rent.

The following day 9/9/21 as I walked pass the barber shop downstairs, I saw Quito shouting and cursing at the Barbar who was with a customer, that he better pay him the rent, or he'll evict him.

On Monday 9/13/21 Mr. Quito stood outside my window speaking with someone about renting the vacant apt 1D for \$2,000. This apartment is directly across from me, men have been doing repairs in the apartment. On Friday 9/17/21 the new tenants moved in.

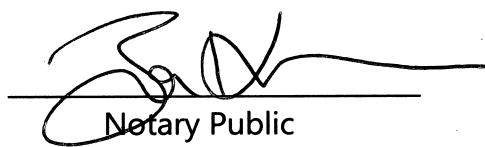
On Friday 9/17/21 Letters were posted to each door in Spanish from the Trustee. Inviting the tenants meet with the managing agents on Monday 9/20/21 at 11am to answer any questions. Those letters were also removed from doors very quickly. That evening Mr. Quito came to the building and I heard him again saying that no one should pay any attention to those men who are coming to the building. That he's going to evict everybody who doesn't pay rent.

On Thursday 9/23/21 apt 2B became vacant and my neighbor called me that Mr. Quito is already making some repairs to rent the apartment quickly. Also Apt. 4F is quickly being rented.

Sincerely,



Lurica Roman, Apt 1E



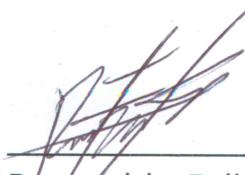
Notary Public

Zoe Kheyman
Notary Public, State of New York
NO. 02KH6359049
Qualified in Westchester County
My Commission Expires 5/22/20
9/9/25

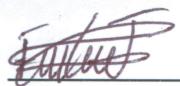
AFFIDAVIT OF SUPPORT

Romualdo Feliciano and Francisca Galindo reside at 450 Concord Ave, Apt 2F, hereby state.

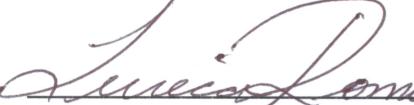
After September 8, 2021, when bankruptcy papers were put on every tenant's door informing us of the new trustee, Mr. Alejandro Quito called my husband Romualdo for the rent. I have him recorded saying that he wants us to move out and give him the key. That he can rent the apartment for \$2,000 but cannot because we're there. Also said that he will not renew our lease and that he will not argue with us but speak with his attorney.



Romualdo Feliciano



Francisca Galindo


Notary Public

LURICA ROMAN
Notary Public, State of New York
No. 01RO6216629
Qualified in Bronx County
Commission Expires Jan. 25, 2022

AFFIDAVIT OF SUPPORT

I, Lessie Cartagena reside at 540 Concord Avenue, Apt 4D hereby state that:

After September 8, 2021, when bankruptcy papers were put on every tenant's door informing us of the new trustee, Alejandro Quito has been making repair in Apt 1D, 4F and 2B and is allowing the workers to leave bathtubs and sinks out in the hallway for weeks. Bags of garbage pile up in the hallways and lobby. Because of this, some tenants, instead of taking their garbage outside they bring their garbage and place them with the bags that the workers leave out. The halls smell with the rotting garbage, and all Mr. Quito cares about is money, renting out the vacant apartments for \$2,000.

Mr. Quito rents these apartments by asking for \$5,000 in cash up front and then the security and rent.

The building roof has been seen by HPD and needs to be completely redone. When it rains and snows my ceiling and that of the others living on the 4th floor begin to leak and ceilings begin to fall.



Lessie Cartagena
Apartment 4D



Lurica Roman
Notary Public

LURICA ROMAN
Notary Public, State of New York
No. 01RO6216629
Qualified in Bronx County
Commission Expires Jan. 25, 2022

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
In re: :
ALEJANDRO and ROSA QUITO, : Chapter 7
Debtors. : Case No. 21-22288 (RDD)
----- x

**ORDER GRANTING TRUSTEE'S MOTION FOR AUTHORITY TO OPERATE
DEBTORS' BUSINESS PURSUANT TO SECTION 721 OF THE BANKRUPTCY CODE**

Upon the motion dated October 12, 2021 (the “Motion”), of Howard P. Magaliff, the chapter 7 trustee (the “Trustee”) of the estate of Alejandro and Rosa Quito (the “Debtors”), by his attorneys Rich Michaelson Magaliff, LLP, for the entry of an order terminating his authority to operate the property at 540 Concord Avenue, Bronx, New York; and adequate and sufficient notice of the Motion having been given in accordance with the *Order Scheduling Hearing on Trustee's Motion to Terminate Authority to Operate 540 Concord Avenue, Bronx, New York and Approving Notice* dated October __, 2021 [doc. __1]; and no objections to the Motion having been filed; and upon the record of the hearing held by the Court on October 19, 2021 and after due deliberation, the Court having found and concluded that the Trustee has established sufficient cause for the relief requested for the reasons stated in the Motion; and no further notice being required, it is

ORDERED that the Motion is granted as set forth herein; and it is further

ORDERED that the Order dated September 7, 2021 (the “Operating Order”)

granting the Trustee the authority pursuant to section 721 of the Bankruptcy Code to operate and manage the Debtors’ businesses and properties in which they have an interest, including without limitation 540 Concord Avenue, Bronx (the “Concord Avenue Property”) through the Debtors’ 100% ownership of Mel Service, Inc. and 1838 Westchester Avenue, Bronx (the “Westchester

Avenue Property") through the Debtors' 100% ownership of Gualaceo Realty Corp. be, and hereby is vacated with respect to the Concord Avenue Property only; and it is further

ORDERED that the Trustee and his managing agent, MYC & Associates, Inc. be, and hereby are immediately relieved and discharged from all obligation and liability for the management and operation of the Concord Avenue Property; and it is further

ORDERED that the Trustee's authority under the Operating Order shall continue with respect to the Westchester Avenue Property.

Dated: White Plains, New York
October __, 2021

Hon. Robert D. Drain
United States Bankruptcy Judge